Panel Decision for dispute CAC-ADREU-003942

Case number	**CAC-ADREU-003942**
Time of filing	**2006-12-21 10:00:37**
Domain names	**copenhagenzoo.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Zoologisk Have**

Respondent

Organization / Name	**Name Battery, Ltd., Name Battery, Ltd.**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal proceedings regarding the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Zoologisk Have, has filed a complaint against the holder of the disputed domain name Name Battery, Ltd. (hereinafter the Respondent). The Complaint was submitted to the Czech Arbitration Court on December 12, 2006.

The formal date of the Commencement of the ADR-proceeding is January 4, 2007.

The Respondent applied for registration of the domain name COPENHAGENZOO.EU on the first day of the so-called “Land Rush”-period on April 7, 2006.

The Respondent has submitted its Response to the Complaint within the deadline of 30 working days from notification of the commencement of the ADR-proceeding.

A. COMPLAINANT

The Complainant states to be the holder of the trademark “Copenhagen Zoo”, which is protected under Danish Law. In support hereof the Complainant has submitted a print of the Complainant’s home page, demonstrating that the name “Copenhagen Zoo” is used by the Complainant (in connection with the offering of goods and services), cf. annex 2 to the Complaint.

The Complainant argues that the Respondent’s registration of the domain name is speculative and abusive and therefore conflicts with the provisions in Article 21(1) of EC Regulation 874/2004 (hereinafter the Regulation).

In support of the allegation that the registration is speculative, the Complainant alleges that the Respondent has shown a pattern of conduct that provides evidence hereof. Consequently, The Complainant has referred to ADR-case no. 982 (SMARTMACHINE) in which proceeding the Respondent was also involved as the registrant of the domain name.

Prior to the commencement of this proceeding the Complainant contacted the Respondent in order to have the domain name transferred voluntarily. On the 6th of June 2006 the Respondent did in fact agree to transfer the domain name to the Complainant. A transfer certificate was sent to the Respondent but it was never returned to the Complainant. A copy of the correspondence between the parties has been attached to the Complaint as annex 1.

In the Complainant’s view this proceeding is rendered necessary in order to have the domain name transferred to the Complainant.

With reference to Article 21 of the Regulation, The Complainant requests that the disputed domain name is transferred to the Complainant.

B. RESPONDENT

In response to the Complaint the Respondent has stated that it is willing to accept a transfer request as soon as both parties have signed a transfer agreement.

The Respondent has not made any other comments to the Complaint nor has the Respondent disputed the information that that the Complainant has provided in the Complaint.

DISCUSSION AND FINDINGS

According to the provisions in Article 21(1) of the Regulation a domain name shall be subject to revocation when it is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it

“(a) has been registered by its holder without rights or legitimate interest in the name; or

(b) has been registered or is being used in bad faith.”

Initially, the Panel must examine whether the Complainant holds rights to the name “Copenhagen Zoo”.

The Complainant has not provided any information that proves that it possesses a trademark registration for the name “Copenhagen Zoo”. Therefore the Panel must assume that the Complainant is not the holder of such a registration.

However, by the submitted material it is demonstrated that the Complainant is the owner of a so-called “common law“ trademark (a trademark-by-use), which is protected according to Danish law. Moreover, the Respondent has not disputed that the Complaint is in fact the holder of such a trademark right to the name.

A “common law” trademark is recognised as a right under Article 10(1) of the Regulation.

Therefore, the Panel finds that the Complainant has established evidence of a prior right under Article 10(1) of the Regulation.

According to the Complainant the Respondent has no rights or legitimate interest in the domain name, cf. Article 21(1)(a) of the Regulation, since the Respondent has not used the name in connection with the offering of goods and services nor has made demonstrable preparations to do so. Furthermore, the Respondent is not commonly known by the name or is making fair use of it.

The Respondent has not made any comments to this in its Response to the Complaint. On the contrary the Respondent has in fact offered to transfer the domain name to the Complainant. The Panel has, however, not received any information that the parties have initiated such a transfer before the time of this decision.

The Respondent has not provided any information that could support that the Respondent has any legitimate interests or rights in the domain name, cf. e.g. Article 21(1)(a) of the Regulation. The Panel notes that since the name includes a geographical reference to “Copenhagen” (the capital of Denmark) followed by the word “ZOO” it seems unlikely to the Panel that the Respondent (or any other third party) could establish a right to the name without approval from the Complainant.

The Panel therefore finds that the Complainant has demonstrated prima facie that the Respondent has registered the domain name without rights or legitimate interests in the name.

The Panel refers to similar cases in which the Complainants have established prima facie that the Respondents lacked legitimate interests or rights in the domain names that corresponded to the Complainants’ trademarks or other rights that are comprised by Article 10(1), and where the Respondents have failed to demonstrate otherwise. For instance this applied in the cases no. 3885 (WORLDSBK.EU), 2328 (ESCREDIT.EU), and 2986 (TERXON.EU) in which the domain names were all transferred to the Complainants who had all established prima facie that the Respondent had no rights or legitimate interests in the disputed domain names.

The Complainant has also argued that the Respondent has registered the domain name in bad faith, cf. Article 21(1)(b) of the

Regulation. Thus, in the Complainant's view the Respondent has as a pattern of conduct registered domain names belong to third parties. In support of this the Complainant has referred to case no. 982 (SMARTMACHINE.EU).

The Panel has made a brief investigation and found one more case in which the Respondent was involved, cf. case no. 1250 (VOCA). In this case the domain name was not transferred to the Complainant, since the Complainant had not established evidence that the registration of the domain name conflicted with Article 21(1) of the Regulation.

The Panel does not find that the reference to one single case (case no. 982) is sufficient to prove a pattern of conduct of bad faith registrations from the Respondent.

However, the conditions in Article 21(1)(a) and (b) are alternative, and the fact that the Respondent has registered the domain name without rights or legitimate interests in the name is sufficient to transfer the domain name to the Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name COPENHAGENZOO be transferred to the Complainant

PANELISTS

Name	**Jakob Plesner Mathiasen**

DATE OF PANEL DECISION 2007-03-06

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, Copenhagen Zoo, requested that the domain name COPENHAGENZOO.EU was transferred to the Complainant on the grounds that the Respondent had no rights or legitimate interest in the domain name and had acted in bad faith, cf. Article 21(1) of EC Regulation 874/2004.

The Panel found that the Complainant had demonstrated a prior right (trademark) pursuant to Article 10(1) of the Regulation.

The Respondent had not disputed the information that the Complainant had provided in the Complaint. On the contrary the Respondent had in fact offered to transfer the domain name to the Complainant.

The Panel found that the Complainant had demonstrated prima facie that the Respondent had registered the domain name without rights or legitimate interests in the name.

Therefore, the Panel ordered that the domain name COPENHAGENZOO.EU was transferred to the Complainant.